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District Court

JUN - 1 2006

For The Northern Mariana Islands
By _____
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d.b.a. Rota Handicraft and Lee Byung Deuk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE NORTHERN MARIANA ISLANDS

SAIPAN HANDICRAFT,

Plaintiff,

vs.

MICRONESIA WOODCRAFT ENT., INC.,
ET. AL.

Defendants.

Civil Action No. 05-0040

ANSWER OF DEFENDANTS LK
CORPORATION, dba ROTA
HANDICRAFT and LEE
BYUNG DEUK to PLAINTIFF'S
FIRST AMENDED VERIFIED
COMPLAINT; COUNTERCLAIM;
DEMAND FOR JURY TRIAL

COMES NOW Defendants LK Corporation (LK Corp.) and Lee, Byung Deuk (Lee), by and through undersigned counsel, and hereby answers the allegations set forth in Plaintiff Saipan Handicraft's (Handicraft) First Amended Verified Complaint, as follows:

1. Defendant LK Corp. and Defendant Lee admit the allegations in paragraph 1.

2. Defendant LK Corp and Defendant Deuk deny the allegations in paragraph 2.

3. Defendant LK Corp. and Defendant Lee admit the allegations in paragraph 3

4. With respect to paragraphs 4 through 25, Defendant LK Corp. and Defendant Lee are without knowledge or information sufficient to form a belief as to the truth of the allegations, and on

1 that basis, deny the allegations.

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3 5. With respect to paragraph 26, Defendant LK Corp. and Defendant Lee admit that LK
4 Corporation is a CNMI Corporation, which does business in the CNMI as Rota Handicraft.
5 Defendant LK Corp. and Defendant Lee are without knowledge or information sufficient to
6 form a belief as to the truth of the allegations, and on that basis, deny all other allegations in
7 paragraph 26.

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9 6. With respect to paragraph 27, Defendant LK Corp. and Defendant Lee are without knowledge
10 or information sufficient to form a belief as to the truth of the allegations, and on that basis,
11 deny the allegations.

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13 7. With respect to paragraph 28, Defendant LK Corp. and Defendant Lee admit that Lee Byung
14 Deuk is a CNMI resident and owner of Rota Handicraft. Defendant LK Corp. and Defendant
15 Lee are without knowledge or information sufficient to form a belief as to the truth of the
16 remaining allegations, and on that basis, deny all other allegations in paragraph 28.

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18 8. With respect to paragraphs 29 through 40, Defendant LK Corp. and Defendant Lee are
19 without knowledge or information sufficient to form a belief as to the truth of the allegations,
20 and on that basis, deny the allegations.

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22 9. With respect to paragraphs 41 through 64, Defendant LK Corp. and Defendant Lee are
23 without knowledge or information sufficient to form a belief as to the truth of the allegations,
24 and on that basis, deny the allegations.

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26 10. With respect to paragraphs 65 through 72, Defendant LK Corp. and Defendant Lee are
27 without knowledge or information sufficient to form a belief as to the truth of the allegations,
28 and on that basis, deny the allegations.

1 11. With respect to paragraph 73, Defendant LK Corp. and Defendant Lee are without knowledge
2 or information sufficient to form a belief as to the truth of the allegations, and on that basis,
3 deny the allegations.

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5 12. Defendant LK Corp. and Defendant Lee deny any and all allegations in paragraphs 1-73 of
6 the First Amended Complaint not specifically admitted herein.

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8 13. With respect to paragraph 74, Defendant LK Corp. and Defendant Lee deny the allegation that
9 Plaintiff's "trademarks became famous and acquired a secondary meaning with the public as
10 indicating a single source of quality hand-crafted traditional dolls." With respect to the
11 remaining allegations in paragraph 74, Defendant LK Corp. and Defendant Lee are without
12 knowledge or information sufficient to form a belief as to the truth of the remaining
13 allegations, and on that basis, deny the remaining allegations.

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15 14. With respect to paragraph 75, Defendant LK Corp. and Defendant Lee deny the allegation that
16 Plaintiff "had acquired an impressive and valuable reputation with the public due to the
17 excellent quality of the dolls manufactured and sold by it." With respect to the remaining
18 allegations in paragraph 75, Defendant LK Corp. and Defendant Lee are without knowledge
19 or information sufficient to form a belief as to the truth of the remaining allegations, and on
20 that basis, deny the remaining allegations.

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22 15. With respect to paragraphs 76 through 78, Defendant LK Corp. and Defendant Lee are
23 without knowledge or information sufficient to form a belief as to the truth of the allegations,
24 and on that basis, deny the allegations.

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26 16. With respect to paragraph 79, Defendant LK Corp. and Defendant Lee deny the allegations
27 that "[b]y virtue of their decades of consistent and diligent efforts and cultivated look,
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1 [Plaintiff] has made the 'Bo Jo Bo Wishing Dolls' name, legend, mark as well as the
2 distinctive look and trade dress famous, which protected trade dress is not a functional part
3 of the dolls."

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5 17. With respect to paragraph 80, Defendant LK Corp. and Defendant Lee admit marketing and
6 selling dolls. Defendant LK Corp. and Defendant Lee deny the allegation that Plaintiff lacked
7 knowledge of Defendant LK Corp. and Defendant Lee's activities. Defendant LK Corp. and
8 Defendant Lee deny the allegation that Plaintiff did not consent to its activities. Defendant
9 LK Corp. and Defendant Lee deny the allegation that Plaintiff "has established extensive and
10 valuable goodwill in connection with its dolls identified by its trademarks and unique dress."
11 Defendant LK Corp. and Defendant Lee deny the allegation that they, "with full knowledge
12 of the existence and reputation of [Plaintiff's] dolls, and with specific intent to deprive
13 [Plaintiff] of the great profits [Plaintiff] was enjoying through the sale of its dolls, began
14 making, marketing and selling, and they continue to make, market and sell, dolls that copy and
15 use, without permission, the trademarks and trade dress of [Plaintiff]." Defendant LK Corp.
16 and Defendant Lee, to the extent not specifically admitted, deny all other allegations in
17 paragraph 80.

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19 18. With respect to paragraph 81, Defendant LK Corp. and Defendant Lee deny the allegation
20 that "dolls manufactured and sold by Defendants use cards that imitate exactly the
21 Handicraft card/label or use a card/label so closely resembling the label used by [Plaintiff]
22 as to be nearly identical or identical."

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24 20. With respect to paragraph 82, Defendant LK Corp. and Defendant Lee deny the allegation
25 that they "have known of the use of [Plaintiff's] trademarks to identify [Plaintiff's]
26 marketing of its dolls. Defendant LK Corp. and Defendant Lee admit receiving a letter
27 from Plaintiff dated January 23, 2006 "RE: Notice of Injunction, Litigation" and verbal
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1 communications. Defendant LK Corp. and Defendant Lee deny the remaining allegations
2 as to any manner of actual or constructive notice. Defendant LK Corp. and Defendant Lee
3 are without knowledge or information sufficient to form a belief as to the truth of the
4 remaining allegations, and on that basis, deny the remaining allegations.

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6 21. With respect to paragraph 83, Defendant LK Corp. and Defendant Lee deny the allegation
7 that they are using the symbols, names, marks of Plaintiff's dolls in connection with the
8 sale, offering for sale, distribution, advertising, and promotion of their dolls. Defendant
9 LK Corp. and Defendant Lee deny the allegation that they have "acted and are acting with
10 the purpose of taking the benefit of the favorable reputation and valuable goodwill which
11 [Plaintiff] has established in its trademarks." Defendant LK Corp. and Defendant Lee
12 deny the allegation that they caused or are "causing their dolls to be passed off as made,
13 authorized, sponsored, or endorsed by or otherwise connected with [Plaintiff]."

14
15 22. With respect to paragraph 84, Defendant LK Corp. and Defendant Lee deny the allegation
16 that they selected, used and are using "similar or confusing names, legends, marks or trade
17 dress in connection with the sale, offering for sale, distribution, advertising, and promotion
18 of their dolls with the purpose of taking the benefit of the favorable reputation and
19 valuable goodwill which [Plaintiff] has established in its trademarks." Defendant LK
20 Corp. and Defendant Lee deny the allegation that they have caused or are causing "the
21 dolls of others to be passed off as made, authorized, sponsored, or endorsed by or
22 otherwise connected with [Plaintiff]."

23
24 23. With respect to paragraph 85, Defendant LK Corp. and Defendant Lee admit the allegation
25 that they have modified their dolls over time. Defendant LK Corp. and Defendant Lee
26 deny the allegation that they modified their dolls over time "to more and more close
27 resemble the Handicraft dolls." Defendant LK Corp. and Defendant Lee deny the
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1 allegation that they modified their dolls “until they were exact imitations and complete
2 counterfeits.” Defendant LK Corp. and Defendant Lee are without knowledge or
3 information sufficient to form a belief as to the truth of the allegation that Defendant
4 Tirzo J. Adriatico and Defendant Micronesia Woodcraft Ent. Inc. “began producing dolls
5 that did not have hair, a mouth or a hat and that had no infringing label attached,” and on
6 that basis, deny the allegations. Defendant LK Corp. and Defendant Lee are without
7 knowledge or information sufficient to form a belief as to the truth of the allegations that
8 female doll skirts produced by Defendant Tirzo J. Adriatico and Defendant Micronesia
9 Woodcraft Ent. Inc. “were distinctly stiff and flat,” and on that basis, deny the allegation.
10

11 24. With respect to paragraph 86, Defendant LK Corp. and Defendant Lee deny the allegation
12 that “following the promotional campaign in Japan” they “modified or created or sold
13 dolls to more closely resemble those of [Plaintiff] by, for example, incorporating hair,
14 shaping the skirts, adding white mouths, red noses, and a pistachio nut hat, and by
15 attaching a label with ‘Bojo Bo Wishing Dolls’ and ‘Legend of the Bojo Bo Wishing
16 Dolls’ imprinted in a similar font and format to resemble [Plaintiff’s] label.” Defendant
17 LK Corp. and Defendant Lee are without knowledge or information sufficient to form a
18 belief as to the truth of the allegations concerning Defendant Micronesia Woodcraft Ent.,
19 Inc. and Defendant Tirzo J. Adriatico, and on that basis, deny the allegations.
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21 25. With respect to paragraph 87, Defendant LK Corp. and Defendant Lee deny the allegation
22 that they “created dolls or changed the look of their dolls so much as to make them
23 virtually indistinguishable from the dolls of [Plaintiff].”
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25 26. With respect to paragraph 88, Defendant LK Corp. and Defendant Lee are without
26 knowledge or sufficient information to form a belief as to the truth of the allegation that
27 “the general public is misled into buying Defendant Micronesia Woodcraft Ent., Inc. dolls
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1 and dolls of the other Defendants under the impression that they are buying [Plaintiff's]
2 dolls," and on that basis, deny the allegation. Defendant LK Corp. and Defendant Lee
3 deny the allegation in paragraph 88 "that such confusion results solely from Defendants'
4 fraudulent and deceitful attempts to imitate [Plaintiff's] dolls and to pass off their dolls to
5 the public as that of [Plaintiff] or as being associated with those of [Plaintiff]." With
6 respect to the remaining allegations in paragraph 88, Defendant LK Corp. and Defendant
7 Lee are without knowledge or sufficient information to form a belief as to the truth of the
8 allegation, and on that basis deny the remaining allegations.

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10 27. With respect to paragraph 89, Defendant LK Corp. and Defendant Lee admit that Plaintiff
11 has communicated verbally and by manner of a letter dated January 23, 2006 from
12 Plaintiff regarding "Notice of Injunction, Litigation" that Plaintiff protests alleged
13 infringements and activities. Defendant LK Corp. and Defendant Lee deny the remaining
14 allegations in paragraph 89.

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16 28. With respect to paragraph 90, Defendant LK Corp. and Defendant Lee deny the
17 allegations.

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19 29. With respect to paragraph 91, Defendant LK Corp. and Defendant Lee are without
20 knowledge or information sufficient to form a belief as to the truth of the allegations, and
21 on that basis, deny the allegations.

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23 30. With respect to paragraph 92, Defendant LK Corp. and Defendant Lee deny the
24 allegations.

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26 31. With respect to paragraphs 93 through 96, Defendant LK Corp. and Defendant Lee deny
27 the allegations.

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32. With respect to paragraph 97, Defendant LK Corp. and Defendant Lee are without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis, deny the allegations.
33. With respect to paragraph 98, Defendant LK Corp. and Defendant Lee repeat and incorporate by reference its answers to paragraphs 1 through 97.
34. With respect to paragraph 99, Defendant LK Corp. and Defendant Lee admit that they have caused dolls to enter into interstate commerce with the designation and representation “Bojo Bo Wishing Dolls” and “Legend of the Bojo Bo Wishing Dolls.” Defendant LK Corp. and Defendant Lee deny the remaining allegations in paragraph 99.
35. With respect to paragraphs 100 through 103, Defendant LK Corp. and Defendant Lee deny the allegations.
36. With respect to paragraph 104, Defendant LK Corp. and Defendant Lee repeat and incorporate by reference its answers to paragraphs 1 through 103.
37. With respect to paragraphs 105 through 107, Defendant LK Corp. and Defendant Lee deny the allegations.
38. With respect to paragraph 108, Defendant LK Corp. and Defendant Lee repeat and incorporate by reference its answers to paragraphs 1 through 107.
39. With respect to paragraphs 109 through 111, Defendant LK Corp. and Defendant Lee deny the allegations.

1 40. With respect to paragraph 112, Defendant LK Corp. and Defendant Lee repeat and
2 incorporate by reference its answers to paragraphs 1 through 111.

3
4 41. With respect to paragraphs 113 through 115, Defendant LK Corp. and Defendant Lee
5 deny the allegations.

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7 42. With respect to paragraph 116, Defendant LK Corp. and Defendant Lee repeat and
8 incorporate by reference its answers to paragraphs 1 through 115.

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10 43. With respect to paragraphs 117 through 120, Defendant LK Corp. and Defendant Lee deny
11 the allegations.

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13 44. With respect to paragraph 121, Defendant LK Corp. and Defendant Lee repeat and
14 incorporate by reference its answers to paragraphs 1 through 120.

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16 45. With respect to paragraph 122 through 124, Defendant LK Corp. and Defendant Lee deny
17 the allegations.

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19 46. With respect to paragraph 125, Defendant LK Corp. and Defendant Lee repeat and
20 incorporate by reference its answers to paragraphs 1 through 124.

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22 47. With respect to paragraphs 126 through 131, Defendant LK Corp. and Defendant Lee
23 deny the allegations.

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25 48. With respect to paragraph 132, Defendant LK Corp. and Defendant Lee repeat and
26 incorporate by reference its answers to paragraphs 1 through 131.

1 49. With respect to paragraphs 133 through 135, Defendant LK Corp. and Defendant Lee deny
2 the allegations.

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5 50. With respect to paragraph 136, Defendant LK Corp. and Defendant Lee repeat and
6 incorporate by reference its answers to paragraphs 1 through 135.

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8 51. With respect to paragraphs 137 through 144, Defendant LK Corp. and Defendant Lee deny
9 the allegations.

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11 52. With respect to paragraph 145, Defendant LK Corp. and Defendant Lee repeat and
12 incorporate by reference its answers to paragraphs 1 through 144.

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14 53. With respect to paragraphs 146 through 152, Defendant LK Corp. and Defendant Lee deny
15 the allegations.

16 **AFFIRMATIVE DEFENSES**

17 Defendant LK Corp. and Defendant Lee raise the following affirmative defenses against
18 Plaintiff:

- 19 1. Plaintiff has failed to state a claim upon which relief may be granted
- 20 2. Acquiescence.
- 21 3. Laches.
- 22 4. Estoppel.
- 23 5. Waiver.
- 24 6. Prior use of the alleged trademark and trade dress by a party other than Plaintiff.
- 25 7. Plaintiff does not yet have a registered trademark or trade dress with the United
- 26 States Patent and Trademark Office.
- 27 8. Plaintiff's alleged trade dress is aesthetically functional.

1 9. Plaintiff's alleged trade dress is not distinctive and have not acquired secondary
2 meaning.

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4 **COUNTERCLAIM**

5 Defendants LK Corp. and Defendant Lee (Counterclaimants), by and through undersigned
6 counsel, hereby set forth the following counterclaim against Saipan Handicraft:

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8 1. Jurisdiction is vested in this court pursuant to 28 U.S.C. § 1338(b).

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10 2. Venue is properly vested in this court pursuant to 28 U.S.C. § 1391(b).

11
12 **FACTUAL BACKGROUND**

13 3. Counterclaimant LK Corporation is a CNMI domestic corporation licensed to do business
14 in the CNMI.

15
16 4. Counterclaimant Lee, Byung Deuk is a CNMI resident and owner of Rota Handicraft.

17
18 5. Upon information and belief, Plaintiff/Counter-defendant Saipan Handicraft is a sole
19 proprietorship, licensed to do business in the CNMI, having its principal place of business
20 at Chalan Kiya, Saipan, Commonwealth of the Northern Mariana Islands.

21
22 6. Upon information and belief, use of the name "Bo Jo Bo Wishing Dolls" and the "Legend
23 of the Bo Jo Bo Wishing Doll" was continually in use by various parties, including the
24 Taimanao family on the island of Rota, Commonwealth of the Northern Mariana Islands
25 and other parties during the same time that Saipan Handicraft was also using the name "Bo
26 Jo Bo Wishing Dolls" and the "Legend of the Bo Jo Bo Wishing Doll."

1 7. On or about November 9, 2005, Counterclaimants began manufacturing and producing
2 dolls and using the name "Bo Jo Bo Wishing Doll" and the "Legend of the Bo Jo Bo
3 Wishing Doll."

4
5 8. The design of Counterclaimant's dolls has been modified over time and do not reflect any
6 of the trade dress features claimed to be protected by Saipan Handicraft.

7
8 9. The changes to the trade dress features of Counterclaimant's dolls were made to improve
9 their overall quality, appearance, and commercial value for customers.

10
11 10. Counterclaimants have oral contracts and agreements with certain buyers, suppliers of
12 materials, retailers and other businesses for the purchase of Counterclaimant's dolls or
13 services.

14
15 11. Plaintiff, through counsel, has represented that he would not to seek to enjoin the
16 manufacture of Bo Jo Bo Wishing Dolls made in Rota. Plaintiff filed the present action
17 against Defendant LK Corp. and Defendant Lee,dba Rota Handicraft, notwithstanding
18 Plaintiff's representations.

19 **FIRST CAUSE OF ACTION**

20 **TORTIOUS INTERFERENCE WITH CONTRACTS**

21
22 11. Counterclaimants repeat and incorporate by reference the allegations set forth in
23 paragraphs 1 through 10 of the counterclaim.

24
25 12. Saipan Handicraft, personally and through their officers and agents, with full knowledge of
26 the oral contracts and agreements between Counterclaimants and its buyers, and intending
27 to harass, annoy, persecute, injure, destroy and interfere with Counterclaimants' business,
28

1 wrongfully, intentionally and maliciously persuaded Counterclaimant's buyers to repudiate
2 their contracts and agreements to purchase dolls.

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4
5 13. Saipan Handicraft made malicious, fraudulent and wrongful representations as the quality
6 of Counterclaimant's dolls as well as the right of Counterclaimants to produce and sell
7 dolls.

8
9 14. Saipan Handicrafts actions has resulted in the cancellation of orders and contracts for the
10 purchase of Counterclaimant's dolls.

11
12 15. Counterclaimants have been damaged in the form of lost sales in an amount to be proven
13 at trial.

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15 16. Counterclaimants seek injunctive relief against Saipan Handicraft to prevent continued
16 interference with Counterclaimant's business relationships with existing or future buyers
17 of its products.

18
19 **DEMAND FOR JURY TRIAL**

20 Defendant/Counterclaimant LK Corp. and Defendant/Counterclaimant Lee hereby request
21 that all issues raised in this matter be resolved at a trial by jury.

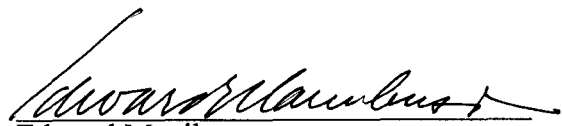
22 **PRAYER FOR RELIEF**

23 For the foregoing reasons, Defendant LK Corp. and Defendant Lee respectfully ask the
24 court to grant the following relief:

- 25
26 1. Render judgment that Plaintiff take nothing from his claims against Defendant LK
27 Corp. and Defendant Lee.

2. Dismiss Plaintiff's civil action with prejudice.
3. Assess costs against Plaintiff.
4. Find this to be an exceptional case and award Defendant LK Corp. and Defendant Lee reasonable attorney fees under 15 U.S.C. § 1117(a)
5. For an award of damages in favor of Defendant/Counterclaimant LK Corp. and Defendant/Counterclaimant Lee to be proven at trial.
7. For an award of attorneys' fees and costs incurred by Defendant/Counterclaimant LK Corp. and Defendant/Counterclaimant Lee.
8. For an order of injunctive relief against Saipan Handicraft prohibiting them from actions that would interfere with Defendants/Counterclaimants business.

RESPECTFULLY SUBMITTED this 31st day of May 2006.


Edward Manibusan
Attorney for Defendants LK Corporation,
d.b.a. R ota Handicraft and Lee Byung Deuk.